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FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Telephone (602) 916-5000
Attorneys for Navajo Water Co., Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF NAVAJO WATER CO., INC., AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-03511A-14-0304

**RESPONSE TO SUPPLEMENTAL
APPLICATION FOR
INTERVENTION**

ORIGINAL

Applicant, Navajo Water Co., Inc. (the "Company"), hereby responds to the Supplemental Application for Intervention filed by Robert T. Hardcastle on behalf of Brooke Utilities, Inc. ("Brooke"). In short, the supplemental filing further illustrates that Brooke's application for intervention should be denied.

I. This is a Rate Case, Not an Action for Breach of Contract.

In this docket, the Commission must determine the fair value of the Company's assets devoted to public utility service and, once determined, set just and reasonable rates. No statute, rule or order of the Commission required the filing of this rate case, or the selection of a specific test year. And while the Commission will consider revenues and expenses along with rate base, including pro forma adjustments to the test year plant, revenues and expense consistent with A.A.C. R14-2-103, the Commission cannot consider an alternative test year and/or rate base allegedly required by a contract between the current and former shareholders of the Company.

In contrast, an action for breach of contract generally requires the plaintiff to show that (1) a valid contract exists; (2) the contract has been breached; (3) defendant caused the breach; and (4) plaintiff has been damaged by such breach. Although Brooke's

1 supplemental application sets forth a litany of facts to support its contract claims, those
2 factual allegations are not in evidence, are in dispute, and the Commission is not the place
3 to adjudicate them. In fact, the Commission is legally prohibited from attempting to
4 interpret the contract between Brooke, the Company's former shareholder, and JW Water,
5 the current shareholder.¹

6 The sole basis for Brooke's asserted interest is the contract. However, the
7 Commission cannot interpret the contract that forms the predicate for Brooke's
8 intervention request. Therefore, Brooke has failed to state a basis for intervention.
9 Again, Brooke is not a customer and will not pay the rates approved by the Commission
10 in this docket. Nor can the Commission grant the relief Brooke seeks – a change in the
11 test year. Even assuming arguendo, that the Company used a test year different than that
12 called for in the agreement raised by Brooke, the Commission cannot interpret the
13 contract and, based on that, order that the test year be changed to mitigate Brooke's
14 allegations of harm. This is a rate case, not a lawsuit over contract.

15 In sum, Brooke must not be allowed to expand the issues in this rate case to include
16 its breach of contract claims. Besides such claims having no place in this rate case,
17 allowing Brooke to intervene will expand the scope of the proceeding, possibly delay it,
18 and certainly increase the cost as Brooke seeks to turn a Class D rate case into an action
19 for breach of a stock purchase agreement.

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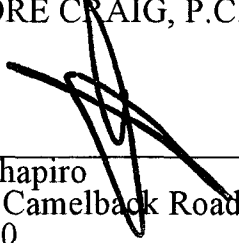
23
24
25 ¹ *Gen. Cable Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976)
26 ("the construction and interpretation to be given to legal rights under a contract reside
solely with the courts and not with the Corporation Commission").

1 **II. The Commission Should Preclude the Unauthorized Practice of Law by**
2 **Hardcastle.**

3 In the December 23, 2014 Procedural Order, Brooke was directed to show that
4 Hardcastle is authorized to represent Brooke in this matter.² Brooke has failed to establish
5 such authority. This is not a mere technicality. The prohibition on authorized practice of
6 law should serve to limit those who do not (or choose not) to understand and adhere to the
7 applicable processes the Commission follows. This is clear in a case like this, where a
8 non-lawyer who has not shown he is authorized to act has sought to derail this rate case in
9 order to pursue a misguided action for breach of contract against a party other than the
10 applicant. While the Commission's ratemaking powers are broad, they simply do not
11 include the power to interpret contracts and remedy breaches. Yet, this is exactly what
12 Hardcastle in the name of Brooke is seeking to do in this rate case. This unauthorized
13 effort should be stopped now, before further costs are incurred and the Company and its
14 customers are further prejudiced.

15 RESPECTFULLY SUBMITTED this 12th day of January, 2015.

16 FENNEMORE CRAIG, P.C.

17 
18 By _____
19 Jay L. Shapiro
20 2394 E. Camelback Road
21 Suite 600
22 Phoenix, Arizona 85016
23 Attorneys for Navajo Water Co., Inc.

24
25 ² See December 23, 2014 Procedural Order at 2, n.1 (citing Supreme Court Rule 31 and
26 directing that Brooke furnish evidence that Hardcastle has been authorized by Brooke's
 Board and that he meets the other criteria applicable under the rule).

1 **ORIGINAL** and thirteen (13) copies
2 of the foregoing were filed
3 this 12th day of January, 2015, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007

8 **COPY** of the foregoing was hand delivered
9 this 12th day of January, 2015, to:

10 Teena Jibilian, ALJ
11 Hearing Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Robin Mitchell
16 Legal Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 Pending Intervention

21 Brooke Utilities, Inc.
22 P.O. Box 82218
23 Bakersfield, CA 93380-2218

24 By: 
25 9891374.1/037410.0002
26